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10 *Attorneys for Court-Appointed Monitor*

11 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

13 THOMAS W. MCNAMARA, as the Court-
Appointed Monitor for AMG Capital
14 Management, LLC, BA Services LLC, Black
Creek Capital Corporation, Broadmoor Capital
15 Partners, LLC, Park 269, LLC, C5 Capital LLC,
DF Services Corp., DFTW Consolidated [UC]
16 LLC, Impact BP LLC, Level 5 Apparel LLC,
Level 5 Capital Partners LLC, Level 5 Eyewear
17 LLC, Level 5 Motorsports, LLC, Level 5
Scientific LLC, NM Service Corp. (f/k/a/
18 National Money Service), PSB Services LLC,
Real Estate Capital LLC (f/k/a/ Rehab Capital I,
19 LLC), Sentient Technologies, ST Capital LLC,
Westfund LLC, Eclipse Renewables Holdings
20 LLC, Scott Tucker Declaration of Trust, dated
February 20, 2015, West Race Cars, LLC, and
21 Level 5 Management LLC and their successors,
assigns, affiliates, and subsidiaries,

22 Plaintiff,

23 v.

24 GARY PATTEN, an individual; PANO
ADVISORS, INC., a Nevada corporation;
25 DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

Case No.

**MONITOR'S COMPLAINT FOR:
(1) FRAUDULENT TRANSFER;
(2) QUASI-CONTRACT CLAIM FOR
RESTITUTION BASED ON UNJUST
ENRICHMENT; AND
(3) ACCOUNTING**

JURY TRIAL DEMAND

1 Plaintiff, Thomas W. McNamara (“Plaintiff” or “Monitor”), in his capacity as court-
 2 appointed Monitor, hereby brings the following Complaint against Gary Patten (“Patten”) and
 3 Pano Advisors, Inc. (“Pano Advisors,” and collectively, “Defendants”), and alleges the following:

4 **PARTIES**

5 1. Plaintiff is the Court-appointed Monitor in the related case *Federal Trade*
 6 *Commission v. AMG Services, Inc., et al.*, 2:12-cv-00536-GMN (VCF) (D. Nev.) (“*FTC v. AMG*
 7 *Services*”), appointed by the Order Appointing Monitor and Freezing Assets entered November
 8 30, 2016 (ECF No. 1099) (the “Monitor Order”). A true and correct copy of the Monitor Order
 9 issued in *FTC v. AMG Services* is attached as Exhibit A hereto and incorporated by reference. The
 10 Monitor Order directs the Monitor, *inter alia*, to preserve the value of the assets in the Monitorship
 11 Estate and authorizes the Monitor, *inter alia*, to institute actions to preserve or recover those assets.
 12 *See id.* at 12.

13 2. The Monitor Order defines the Monitorship Estate to include, *inter alia*, all assets
 14 of Scott Tucker (the individual defendant in *FTC v. AMG Services*) (“Tucker”) and all assets of
 15 the “Monitor Entities” which are identified to include: the corporate defendants named in *FTC v.*
 16 *AMG Services* (AMG Capital Management, LLC, Level 5 Motorsports, LLC, Black Creek Capital
 17 Corporation, and Broadmoor Capital Partners, LLC); the corporate relief defendant named in *FTC*
 18 *v. AMG Services* (Park 269, LLC); and multiple Tucker related and controlled entities: BA
 19 Services LLC, C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC, Impact BP
 20 LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC, Level 5
 21 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service), PSB Services LLC, Real
 22 Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST Capital LLC,
 23 Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of Trust, dated
 24 February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC, and their successors,
 25 assigns, affiliates, and subsidiaries.

26 3. Defendant Gary Patten is an individual who worked for Tucker and various Tucker
 27 entities that now are part of the Monitorship Estate. During the relevant time period, Patten lived
 28 in Kansas, California, and Nevada.

1 understanding of the inner workings of Tucker's Overland Park operations, including its financial
2 books and records, and the ability to investigate and verify the FTC's allegations as true. Thus,
3 Defendants knew or should have known that monies received from Tucker's operations were not
4 rightfully theirs. Rather, those monies belonged to the Monitor Entities and were the proceeds of
5 an ongoing fraud operating out of Overland Park, Kansas and directed by Tucker.

6 15. The millions of dollars in transfers paid to Patten came in a variety of forms,
7 including a regular monthly salary and lump-sum "consulting" payments totaling as much as
8 \$1 million. The bulk of payments to Patten and his company Pano Advisors were the millions of
9 dollars he received through payment in so-called monthly "incentive" fees, which resulted in
10 exorbitant sums being paid to Defendants long after the FTC brought its lawsuit in April 2012 and
11 Defendants were well aware of mounting red flags reflecting an illegal business.

12 **FTC v. AMG Services**

13 16. The Complaint in *FTC v. AMG Services*, filed April 2, 2012, alleged that Tucker
14 and his related entities operated a massive common enterprise engaged in illegal and deceptive
15 practices by, *inter alia*, offering consumers payday loans via disclosures that misled them about
16 the true cost of the loan, requiring that consumers pre-authorize electronic fund transfers, and
17 engaging in unlawful debt collection practices.

18 17. The Complaint alleged violations of Section 5(a) of the FTC Act which prohibits
19 deceptive acts or practices in commerce, the Truth in Lending Act which requires full and accurate
20 disclosure of the true costs of the loan, and the Electronic Funds Transfer Act which prohibits
21 conditioning the extension of credit on a consumers' preauthorization of electronic funds transfers.

22 18. In addition to Tucker, the named defendants in *FTC v. AMG Services* included
23 Tucker's loan servicing companies (AMG Services, Inc. (which had "merged" with CLK
24 Management LLC), NM Service Corp, and Universal Management Services, Inc.), the three Indian
25 tribal entities through which Tucker operated and controlled (Red Cedar Services, Inc., SFS, Inc.
26 and MNE Services, Inc.), and the four Tucker corporate lending companies (AMG Capital, Level
27 5 Motorsports LLC, Black Creek Capital Corporation, and Broadmoor Capital Partners, LLC).

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1 19. The Complaint also alleged that Tucker centrally operated and controlled these
2 businesses from Kansas as a common enterprise which he directed and controlled and had
3 signatory authority on every corporate account.

4 20. The Court bifurcated the proceedings into two phases. During Phase I, the Court
5 adjudicated the merits of the FTC's claims for violations of the FTC Act, TILA, and EFTA. During
6 Phase II, the Court adjudicated remaining issues, including individual liability, affirmative
7 defenses, and remedies.

8 21. As to Phase I, on May 28, 2014, the Court granted summary judgment in favor of
9 the FTC and against Tucker and other defendants on Count I (Deceptive Acts and Practices in
10 violation of the FTC Act) and Count III (Violations of TILA and Regulation Z). *See FTC v. AMG*
11 *Services*, ECF No. 584.

12 22. In 2015, the Court entered permanent injunctions and monetary judgments against
13 the three tribal lending entities that were fronts for Tucker's operations – Order of January 23,
14 2015 against MNE Services, Inc. for \$21 million (ECF No. 727); Orders of November 25, 2015
15 against Red Cedar and SFS for \$2.2 million each (ECF Nos. 888-89).

16 23. As to Phase II, on September 30, 2016, the FTC's motion for summary judgment
17 against Tucker, Level 5 Motorsports, LLC, Black Creek Capital Corporation ("Black Creek
18 Capital"), and AMG Capital Management, LLC, among others, was granted. A true and correct
19 copy of the Order Granting Summary Judgment issued in *FTC v. AMG Services* is attached as
20 Exhibit B hereto and incorporated by reference. The Court entered a judgment in the amount of
21 \$1,301,897,652 as equitable monetary relief. *Id.* at 29.

22 24. The Court found that Tucker structured the tribal lending entities based in Overland
23 Park, Kansas to be completely dependent on the Tucker loan servicing companies, also based in
24 Overland Park, Kansas, and that Tucker and his related entities operated as a common enterprise
25 and were thus jointly and severally liable. *Id.* at 12, 18.

26 **The Monitor**

27 25. On November 30, 2016, the Court entered the Monitor Order to facilitate post-
28 judgment collection and enforcement of the previously entered asset freezes. *See FTC v. AMG*

1 *Services*, ECF No. 960 and 1030. The Monitor Order includes a similar asset freeze provision.
2 *Compare FTC v. AMG Services*, ECF No. 960 at 14 with *FTC v. AMG Services*, ECF No. 1099
3 at 6.

4 26. The Monitor Order granted the Monitor wide powers to preserve the value of the
5 Monitorship Estate assets under the Asset Freeze Order, including but not limited to obtaining or
6 creating an accounting of the Assets and preventing the transfer, withdrawal or misapplication of
7 the Assets. *See* Exhibit A at 12.

8 27. The Monitor Order further authorized the Monitor to conduct such investigation
9 and discovery as may be necessary to locate and account for additional assets and to “[i]nstitute,
10 compromise, adjust, appear in, intervene in, or become a party to such actions or proceedings in
11 state, federal or foreign courts that the Monitor deems necessary and advisable to preserve or
12 recover the Monitorship Estate or to carry out the Monitor’s mandate under this order.” *See*
13 Exhibit A at 13-15.

14 28. BA Services LLC (“BA Services”), the primary source of the transfers to
15 Defendants, is identified as one of the Monitor Entities subject to the Asset Freeze Order. *See*
16 Exhibit A at 3; *see also FTC v. AMG Services*, ECF No. 1030 (“It is further ordered that the
17 following twenty-two entities are within the scope of the Court’s Asset Freeze Order (ECF
18 No. 960): . . . BA Services LLC”).

19 29. Until the appointment of the Monitor, Tucker had exercised full, complete, and
20 exclusive control of, and domination over, the common enterprise, including, but not limited to,
21 the Monitor Entities and all related entities, and all assets of the Monitorship Estate. Certain assets
22 of Tucker and/or the Monitor Entities were nominally held by tribal entities also under Tucker’s
23 control through sham relationships.

24 30. Prior to the Monitor’s appointment, Tucker took no actions to prevent or vindicate
25 the harms caused to the Monitorship Estate by him, his common enterprise, and the fraudulent
26 transfers to Defendants, among others. While Tucker remained in control of the common
27 enterprise and its assets, the fraudulent transfers to Defendants were concealed and only became

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1 discoverable and legally actionable after the Monitor had been appointed and empowered to bring
2 suit to recover such assets.

3 31. During the course of his investigation, the Monitor identified transfers of
4 Monitorship Estate assets to Defendants, which assets rightfully belong to the Monitorship Estate.
5 The Monitor brings this action to void these fraudulent transfers and to claw back from these
6 defendants the more than \$10 million in transfers of Monitorship Estate assets, plus interest, which
7 BA Services and other related entities made at the control and direction of Tucker.

8 **Tucker's Criminal Conviction**

9 32. In February of 2016, Tucker, along with his attorney, Timothy Muir ("Muir"), was
10 indicted on fourteen felony counts in the Southern District of New York in connection with the
11 payday lending enterprise operating out of Overland Park, Kansas.

12 33. The Superseding Indictment, filed on November 30, 2016, included allegations that
13 the loan disclosures were materially false and misleading in setting forth the overall cost of the
14 loan to the consumer; the loans were made at usurious rates; and Tucker sought to shield these
15 illegal operations through sham transactions that made it appear that the lenders were Native
16 American tribal entities immune from state usury laws.

17 34. On October 13, 2017, Tucker and Muir were convicted on all fourteen counts
18 charged in the Superseding Indictment.

19 **Tucker's Fraudulent Payday Lending Activities**

20 35. From 1997 through at least 2013, Tucker founded, controlled, and dominated a web
21 of illegal payday lending companies based in Kansas. For the vast majority of the time, Tucker's
22 enterprise was located at the same address, 10895 Lowell Avenue, Overland Park, Kansas.

23 36. Tucker's companies included the three loan servicing companies, NMS, CLK
24 Management LLC ("CLK"), and Universal Management Services, Inc. ("UMS") (collectively the
25 "Loan Servicing Companies"). *See* Exhibit B at 3. UMS is a subsidiary of NMS.

26 37. CLK was formed by Tucker as a Kansas entity to provide an operational umbrella
27 for all of his portfolios. As described by Tucker's counsel in a 2009 mediation brief, "Since Tucker
28 was in Kansas operating and managing the NMS' portfolio inside the County Bank Program, as

1 well as the Nominee Portfolio Companies and their portfolios which were outside of the County
2 Bank Program, Tucker decided to form a single Kansas entity that would provide the operational
3 umbrella for all of the portfolios.” This entity was CLK, which operated under Tucker’s direction
4 and control from the same Overland Park address. CLK performed a variety of tasks, including
5 acquiring equipment for the benefit of the other portfolios, hiring employees, renting space,
6 contracting with outside vendors, and paying for everything necessary to operate the portfolios.

7 38. CLK later “merged” with AMG Services, Inc. (“AMG Services”), another tribal
8 entity, in an effort to bring its operations within the tribe’s sovereign immunity. This “merger”
9 was accomplished by a scheme orchestrated by Tucker, with the assistance of counsel who filed a
10 sham lawsuit in Kansas court to confirm the “merger”. *See U.S. v. Scott Tucker*, 254 F. Supp. 620,
11 622-23 (S.D.N.Y. 2017) (applying crime-fraud exception to documents relating to Kansas lawsuit,
12 because of government’s evidence showing probable cause that lawsuit was a “‘sham’ lawsuit
13 orchestrated for the purpose of invoking tribal immunity as to defendants’ allegedly usurious
14 lending practices”).

15 39. Tucker managed, owned, operated, controlled, and dominated the tribal lenders, the
16 service companies, and the corporate lenders and the other Monitor Entities from his base of
17 operations in Overland Park, Kansas, where at one point in excess of 600 employees worked.

18 *The Rent-a-Bank Model*

19 40. In order to skirt usury laws in effect in most states, beginning in or about 1997,
20 Tucker invoked an illegal “rent-a-bank model” by which they “exported” interest rates from
21 County Bank of Rehoboth, Delaware (“County Bank”), which was incorporated in a state with no
22 usury laws. This provided the appearance of legitimacy with County Bank as the front for the
23 payday lender, while the actual lender controlled by Tucker would claim only to “service” the
24 loan.

25 41. Tucker knew that this set-up was a sham in violation of the law and knew that they,
26 not the bank, controlled the loan approval process and funded the loans. The bank was paid to act
27 as a front for the illegal enterprise.

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42. In 2003, the States of Kansas, Colorado, and California sued Tucker and certain of his payday lending operations for violation of anti-usury laws.

The Rent-a-Tribe Model

43. Beginning in 2003, Tucker embraced a new model to funnel activities through corporate entities nominally owned by various Native American tribes and invoke the sovereign immunity of the tribes to avoid legal restrictions. This model was based on the sham that the tribes owned and controlled the entities when, in fact, Tucker did so.

44. To implement this model, between 2003 and 2008, Tucker's loan servicing companies entered into agreements with several tribes to become "authorized lenders" for his companies. *See* Exhibit B at 3; *see also* *FTC v. AMG Services*, ECF Nos. 908-02, 908-014, 908-015 (Agreements). The tribes, in turn, formed new corporate entities to facilitate these payday loans, including MNE Services, Inc., Red Cedar Services, Inc., and SFS, Inc. *See* Exhibit B at 3.

45. As part of these efforts, Tucker's companies assigned to the tribal entities multiple trademarks related to websites used by Tucker to offer payday loans. *See* Exhibit B at 14-16; *see also* *FTC v. AMG Services*, ECF No. 908-6 (Trademark assignment records).

46. While Tucker wanted to create the appearance that the tribal entities had a substantive role in the operations, in reality, as Tucker knew, the tribes were no more than conduits for their unlawful payday lending businesses.

47. In February 2016, tribal entities AMG Services, Inc. and MNE Services, Inc., which were corporations nominally established by the Miami Tribe of Oklahoma, entered into a Non-Prosecution Agreement with the U.S. Attorney's Office for the Southern District of New York, in which they admitted and affirmed this. Specifically, the tribal entities admitted the following facts:

1. In late 2003, representatives of The Miami Tribe of Oklahoma ("The Miami") learned that Scott Tucker owned and operated a business that made "payday loans." In or around November 2003, The Miami received a letter of intent from National Money Service, a company controlled by Tucker, contemplating a "Pay Day Loan Business Agreement" between The Miami and Universal Management Services, Inc. ("UMS"), a company also controlled by Tucker. Under the letter, a tribal entity would "become an authorized lender" and "earn substantial income," while "relying upon" National Money Service "to provide not only the capital to fund all loan transactions and all working capital requirements, but also the personnel, equipment, marketing and knowledge to make

1 the business an immediate success.” The letter was followed by a
2 written agreement between the Miami Tribe of Oklahoma Business
3 Enterprises (“MTBE”) and UMS. The agreement provided that
4 MTBE would conduct business in the name “Tribal Financial
5 Services” (“TFS”), and that MTBE would receive a monthly fee and
6 cooperate with UMS “to do all things reasonable [sic] necessary to
7 carry on the payday loan business as may be required by UMS.” It
8 was understood that this duty to cooperate included a duty of MTBE
9 and TFS to invoke tribal sovereign immunity in response to any
10 efforts by state governments to regulate or impose sanctions or
11 prohibitions on such “payday loan business.”

12 2. Under the agreement, Tucker and entities controlled by
13 Tucker, and not The Miami, provided the capital to make loans, and
14 The Miami and its entities were not responsible for any losses.
15 Neither The Miami, nor any entity that it controlled, established or
16 paid to acquire any part of Tucker’s payday lending business.
17 Tucker and others based in Overland Park, Kansas, and not The
18 Miami, managed operations and created the loan approval criteria.
19 All essential steps necessary for the approval of loans were
20 performed in Overland Park, under the direction of Tucker and
21 individuals ultimately reporting to Tucker.

22 3. Tucker, and others reporting to Tucker, using powers of
23 attorney, opened or caused to be opened certain bank accounts in the
24 names of entities controlled by The Miami. Neither The Miami nor
25 any entity that it controlled exercised control over these accounts.

26 4. In certain state court litigations, a then representative of The
27 Miami who was then also an officer of entities controlled by The
28 Miami that were involved in the loan business submitted factual
declarations. These declarations were false, in part, because they
overstated the involvement of such former representative and that of
The Miami and/or entities controlled by the Miami in the operations
of the loan business.

19 See <https://www.justice.gov/usao-sdny/file/823666/download>.

20 48. While each of the tribes nominally held bank accounts at US Bank in the names of
21 tribal-related entities, these accounts were in reality controlled by Tucker who used them to fund
22 millions of dollars in personal expenses, including international trips, a private jet, and a
23 professional auto racing team. Tucker also used the funds nominally in the tribes’ portfolio
24 accounts to enrich Defendants.

25 49. Through counsel, Tucker successfully secured the dismissal of multiple lawsuits by
26 claiming that the tribes had substantive ownership and control of the lending entities and were thus
27 protected by “tribal sovereign immunity,” thereby enabling the illegal payday lending operations
28 to continue for many years.

1 **Defendants' Activities with Tucker's Payday Lending Activities**

2 50. Patten met Tucker while Patten worked for Selling Source, LLC and its
3 subsidiaries, including PartnerWeekly L.L.C., and DataX, Ltd. (collectively "Selling Source").
4 Selling Source was embedded in the payday lending industry as a prominent lead generator, which
5 attracted and found potential borrowers and then referred them – for a hefty fee – to lending entities
6 who actually provided the usurious loans.

7 51. Tucker's payday lending operations were Selling Source's largest client. Indeed,
8 Selling Source was formerly co-owned by Tucker, through Monitor Entity, Black Creek Capital.
9 Tucker sold Selling Source to a private equity firm in December 2007. Selling Source claimed
10 that it desired "to help [people] live better physically, spiritually, financially, and emotionally," by
11 providing a resource for short-term loans "quickly and easily."

12 52. In reality, as Selling Source and Defendants knew or should have known, Selling
13 Source was making millions of dollars by directing unsuspecting consumers to unlicensed lenders
14 who offered interest rates well in excess of the legal limits in numerous states (sometimes in excess
15 of 700%). During Patten's tenure at Selling Source and afterwards, Selling Source and its
16 subsidiaries understood the interest rates offered by the Tucker-related entities violated the usury
17 laws of numerous states where consumer leads provided by Selling Source and related Defendants
18 were provided to Tucker-related entities.

19 53. Near the end of 2009, Tucker recruited Patten away from Selling Source to become
20 a direct participant in Tucker's payday lending operations and other related entities. To that end,
21 in April 2009, Patten formed Pano Advisors, which performed work for Tucker's payday lending
22 businesses out of Overland Park, Kansas.

23 54. Tucker had hoped, among other things, that Patten's involvement would increase
24 the volume of and profits from their loan portfolios, thus further extending the reach of their
25 business preying upon innocent consumers through issuance of payday loans with exorbitant
26 interest rates and hidden and misleading terms in the loan documents.

27 55. To this end, Patten with a finance and accounting background, an MBA, and prior
28 experience as a CFO, performed a variety of tasks, including managing and overseeing large

1 financial investments for Tucker personally, managing monthly financial reporting and projections
2 for Tucker's businesses, delivering reports and commentary to Tucker, and performing other
3 managerial and oversight tasks.

4 56. Patten performed his work directly for Tucker. He was paid variously through
5 "consulting" payments, salary, and even as a percentage of the loan portfolios monthly revenues.
6 On information and belief, Patten performed little to no work for anyone other than Tucker, and
7 he did not report to anyone else.

8 57. When Patten started working directly for Tucker, there were already numerous red
9 flags that should have given Patten great pause. Not only was Patten already familiar with the
10 payday lending industry generally, but more specifically he knew about the practices of Tucker's
11 payday lending businesses, including the exorbitant interest rates they charged consumers.

12 58. Patten knew or should have known that the Tucker payday lending businesses, in
13 which he was participating and from which he was financially benefiting, was causing direct harm
14 to thousands of consumers.

15 59. Patten knew or should have known that Tucker had previously been convicted of
16 two federal felony charges of mail fraud and making a false statement to a bank as well as a felony
17 charge in the State of Missouri for passing a bad check and as a result had served a year in
18 Leavenworth federal penitentiary.

19 60. Patten also knew or should have known that Tucker and his payday lending
20 businesses had been hounded by consumer complaints and investigated by state regulators for
21 many years for running an illegal payday lending operations that preyed upon vulnerable
22 consumers by charging usurious interest rates. For instance, in 2003, the States of Kansas,
23 Colorado, and California sued Tucker and some of his payday lending operations for violation of
24 anti-usury laws.

25 61. From there, while working from the inside, Patten's knowledge of the Tucker
26 payday lending enterprise only grew. There was a deluge of additional revelations from 2009 on.
27 Instead of investigating these red flags, Patten's work for Tucker – and payments from Tucker –
28 grew exponentially.

1 62. *First*, and perhaps most importantly, Patten knew or should have known about the
2 FTC's complaint filed against Tucker and multiple related entities on April 2, 2012. *See FTC v.*
3 *AMG Services*, ECF No. 1 (Complaint). The FTC's complaint alleged, *inter alia*, that Tucker was
4 at the center of a massive common enterprise preying upon consumers through deceptive acts and
5 practices and other violations of the law, such as offering consumers payday loans that misled
6 consumers and resulted in consumers paying significantly more to satisfy the loans than what had
7 been represented to consumers. The FTC also alleged that Tucker centrally operated and
8 controlled these businesses from Kansas with signatory authority on every corporate account of
9 both Monitor Entities and tribal entities.

10 63. During 2012, Patten fully understood Tucker's potentially massive exposure to the
11 FTC lawsuit and was specifically informed that the FTC was alleging that Tucker had complete
12 ownership of the payday lending operations and business and that he controlled the payday lending
13 businesses associated with the tribes. On information and belief, Patten was involved in
14 discussions regarding the questionable relationship between the tribal entities and Tucker,
15 including his use over many years of only verbal agreements with the tribes and the lack of
16 supporting documentation regarding ownership and control of the tribal entities (*e.g.*, invoices,
17 contracts, agreements, etc.).

18 64. Accordingly, Defendants were well aware of the allegations that the FTC was
19 raising against Tucker, the Monitor Entities, and the tribal entities, but continued to work with and
20 profit handsomely from Tucker. Instead, the majority of payments to Defendants (well in excess
21 of \$7 million) came *after* the filing of the FTC lawsuit. Rather than distance himself from Tucker's
22 business, Patten became more deeply enmeshed, even signing a contract indicating that he was the
23 CFO of BA Services in December of 2012.

24 65. Even if none of the prior red flags had raised alarm bells, which they should have,
25 Patten's knowledge regarding the FTC lawsuit placed Defendants on notice to investigate and
26 inquire whether the Tucker payday lending business was legal and whether they could continue to
27 accept payments at Tucker's direction in good faith.

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1 66. *Second*, Patten knew or should have known about the increasing pressure multiple
2 state regulators, in addition to numerous consumer complaints, that were continuing to apply not
3 only to Tucker's payday lending business but also to Selling Source.

4 a. For example, since 2003, the Colorado Attorney General had been
5 investigating Tucker's online payday lending companies, but had been
6 stymied by the elaborate efforts to conceal Tucker's involvement in the
7 enterprise and the invocation of "sovereign immunity." In the Colorado
8 litigation, by at least 2011 and 2012, the state regulators were publicly
9 claiming that the tribal involvement was a sham as Tucker owned and
10 operated these payday lending businesses.

11 b. In 2010, Pennsylvania's Department of Banking, Bureau of Compliance,
12 Investigation, and Licensing asserted that Selling Source through its
13 marketing and internet activities was violating consumer protection laws by
14 engaging in unlicensed activity by assisting lenders such as the Tucker
15 entities make illegal payday loans to Pennsylvania residents at astronomical
16 interest rates well in excess of the State's 6% cap on interest rates.
17 Ultimately, in 2011, Selling Source paid a penalty and entered into a consent
18 decree, agreeing not to target Pennsylvania residents in its advertisements
19 or otherwise make its products available to Pennsylvania residents.
20 Additionally, the State of New York subsequently investigated Selling
21 Source, MoneyMutual, LLC, and their use of Montel Williams for similar
22 conduct between 2009 and 2013 via MoneyMutual.com and ultimately
23 entered into a consent decree in 2015.

24 67. *Third*, Defendants knew or should have known about the increasing media scrutiny
25 that Tucker was receiving, particularly beginning in September 2011, when CBS News and the
26 Center for Public Integrity published the results of an investigation regarding Tucker's payday
27 lending business. See <http://www.publicintegrity.org/2011/09/26/6605/paydaylending-bankrolls->
28

1 [auto-racers-fortune;](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses) [https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses)
2 [tucker-drew-elaborate-facade-around-his-payday-loan-businesses.](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses)

3 68. CBS and the Center for Public Integrity's September 26, 2011 article was entitled,
4 "Race car driver Scott Tucker drew an elaborate facade around his payday loan businesses." *See*
5 [https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses)
6 [facade-around-his-payday-loan-businesses.](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses) This investigative report, among other things,
7 exposed the "strange commingling of the interests of Tucker and the Indian Tribe" and claiming
8 that "Tucker is living the life of luxury and spending a fortune on his racing hobby, while the tribes
9 may only be getting a small piece of the revenue from the business. . . . [The investigation] found
10 evidence in court and public records that Tucker still pulls the strings on the businesses he
11 founded. . . . Most revealing of all, bank records show Tucker and his brother Blaine were the only
12 two people able to sign for four payday lending businesses of one tribe." *See id.*

13 69. *Fourth*, during 2013, Patten knew or should have known of Operation Choke Point,
14 which was an effort by the federal government to crack down on certain industries, including
15 payday lenders, including the Monitor Entities, by limiting these industries' access to payment
16 processors, namely banks. Patten learned that as a result of Operation Choke Point, Tucker's long-
17 time bank, US Bank, refused to provide further services to Tucker and the Monitor Entities, and
18 that thereafter numerous other banks also refused to provide services to Tucker and the Monitor
19 Entities. In January 2014, Patten sent an e-mail to family members attaching a recent article
20 discussing Operation Choke Point. By April 2014, Patten knew or should have known that BA
21 Services was changing bank accounts with some frequency, and that at least one bank had
22 terminated services to BA Services, and other Tucker entities, after just one month of service.
23 Furthermore, during this time period, Defendants were receiving checks from multiple different
24 banks as a result of Operation Choke Point.

25 70. This mountain of alarming information put Defendants on further notice to inquire
26 whether Tucker, the Monitor Entities, and/or the tribal entities were engaging in a fraudulent
27 enterprise and whether any funds or gifts received by Defendants at the direction of Tucker had
28 been made or could be made in good faith. Despite the continued presence of the mounting red

1 flags, Patten failed to conduct a sufficient inquiry into the bona fides of Tucker's payday lending
2 enterprise and whether the large transfers being made to him had a fraudulent purpose or nature.

3 71. Nor, on information and belief, did Defendants ever refuse to accept any payments
4 based on concerns about the bona fides of Tucker or his operations. To the contrary, Defendants
5 became even more intertwined in Tucker's business. In fact, on information and belief, in or about
6 2011 or early 2012, Patten directly negotiated for himself a "monthly incentive," based on a
7 percentage of the total fees earned by the portfolio lending entities. Specifically, Patten's company
8 Pano Advisors received 1/2% of all fees generated by MNE Services, Inc., Red Cedar Services,
9 Inc., and SFS, Inc. each month, regardless of any amount of purported "consulting services" the
10 Defendants may have provided BA Services or Tucker during that time period. This arrangement
11 generated millions of dollars for Patten. A table summarizing the payments to Pano Advisors and
12 Patten is attached as Exhibit C hereto and incorporated by reference.

13 **Tucker's Transfers of Monitorship Estate Assets to Defendants**

14 72. Between 2009 and 2016, Defendants received in excess of \$10 million dollars in
15 the form of transfers of the assets rightfully belonging to the Monitorship Estate. These transfers
16 were all made at the specific direction of Tucker. These transfers took many forms, including
17 salary payments, "consulting fees," and "monthly incentive" fees, and, at the direction of Tucker,
18 were paid from Monitorship Estate assets whether from the accounts of tribal entities or Monitor
19 Entities, over which Tucker had control.

20 73. While some transfers were made initially through AMG Services, after Tucker
21 formed BA Services in 2012, he began to direct most payments to Defendants through that entity,
22 as detailed below. *See generally* Exhibit C, which is incorporated by reference.

23 **Transfers of Assets via BA Services**

24 74. The bulk of transfers made to Defendants were made from BA Services to
25 Defendant Pano Advisors. *See* Exhibit C.

26 75. Tucker directed that these fraudulent transfers be made from his operations in
27 Overland Park, Kansas to Defendants, from bank accounts he controlled.

28 ///

1 76. As examples, Defendants received checks and wire transfers from BA Services
2 including:

- 3 a. From April 2012 through August 2012, Defendant Pano Advisors received
4 wire transfers from BA Services's Plains Capital bank account, totaling
5 over \$2.6 million. *See id.*
- 6 b. Between November 2012 and April 2014, Defendant Pano Advisors
7 received checks and wire transfers from BA Services's Welch Bank
8 account, totaling at least \$5 million. *See id.*
- 9 c. In May of 2014, Defendant Pano Advisors received one check from BA
10 Services's TD Ameritrade bank account for \$210,000.

11 77. Over \$7 million was transferred *after* the FTC filed its complaint against the Tucker
12 entities on April 2, 2012.

13 78. Many of the checks issued from BA Services to Defendant Pano Advisors bear
14 memo lines describing the payments as "consulting services" or "consulting fees."

15 79. Each check issued by BA Services to Defendant Pano Advisors was endorsed by
16 Defendant Patten.

17 80. The amounts of many checks to Defendant Pano Advisors appear to be equal to a
18 percentage of the total fees earned by MNE Services, Inc., Red Cedar Services, Inc. and SFS, Inc.
19 during the month preceding issuance of the invoice. In other words, Pano Advisors was paid 1/2%
20 of all the total fees generated by MNE Services, Inc., Red Cedar Services, Inc. and SFS, Inc. each
21 month, regardless of what supposed "consulting services" Pano Advisors may have provided BA
22 Services during that time period. This amount was paid, irrespective of the actual work done
23 during the preceding month.

24 81. Business records show that the total fees earned by MNE Services, Inc., Red Cedar
25 Services, Inc. and SFS, Inc., collectively, are the same as the total fees earned by the following
26 seven tribal entities: Ameriloan, 500 Fast Cash, One Click Cash, United Cash Loans, United Fast
27 Cash, Advantage Cash Services, and Star Cash Processing.

28 ///

1 Transfers of Assets via Black Creek Capital

2 82. Defendant Pano Advisors received additional payments totaling over \$750,000
3 from Black Creek Capital. *See* Exhibit C.

4 Transfers of Assets via AMG Services

5 83. Between 2010 and at least April 2012, Defendants received checks and wire
6 transfers at the direction of Tucker from AMG Services, Inc., which Tucker controlled. On
7 information and belief, these payments totaled well in excess of \$2 million. *See id.* This included
8 the following payments:

- 9 a. Tucker directed that Patten be paid a regular salary by AMG Services, Inc.
10 More specifically, Patten, based on a Form W-2, reported income paid by
11 AMG Services, Inc. of \$441,891.72 in 2010. For 2011, Patten also received
12 at least \$425,384 in salary from AMG Services, Inc., based on a December
13 2011 paystub. *See* Exhibit C.
- 14 b. On information and belief, Patten received in excess of \$600,000 in 2012
15 and \$1,000,000 in 2013 as “salary” from AMG Services, Inc.
- 16 c. Between 2010 and early 2012, Tucker directed that Defendants be paid
17 “consulting fees” by AMG Services, Inc. Some of these were in the form
18 of payments for “consulting fees,” based on invoices from Defendants.
19 Defendant Pano Advisors reported receiving \$800,000 in payments from
20 AMG Services, Inc. in 2011, based on its Form 1099. *See* Exhibit C.
21 Furthermore, Patten invoiced AMG Services, Inc. in December 2011 for
22 \$1,000,000 and thereafter made a deposit of that same amount into Pano
23 Advisors’ bank account on January 13, 2012. *See id.*

24 Additional Gift Transfers to Defendant Patten

25 84. In January 2013, Tucker used Monitorship Estate funds to wire a Texas-based
26 Ferrari dealer to purchase a gift for Patten. In April 2013, Patten received a Ferrari 458 Spider as
27 a gift from Tucker, which was delivered to Defendant Patten in California and titled in Patten’s
28 name. The value of such vehicles, when new, is upwards of \$350,000. Defendant Patten directly

1 sent the Ferrari dealership's wire instructions to Tucker, expressing his thanks and indicating "I
2 really appreciate it[.]" On the same day, Tucker responded that the wire "will go out this
3 morning[.]" Defendant Patten responded, "THANK YOU...Excited[.]"

4 *Additional Loan Transfer to Shared Resources*

5 85. On information and belief, in or about 2014, Tucker also directed that a loan in
6 excess of \$100,000 be given to a new entity that Patten had formed called Shared Resources LLC.
7 On information and belief, that loan was provided to Patten using the assets of Monitor Entities
8 and remains due and owing.

9 86. Defendants appear to have continued to work with Tucker through at least February
10 2016.

11 87. On information and belief, Tucker and Patten appear at times to have made
12 deliberate efforts to use their personal email accounts, and personal phones for text messages and
13 calls, rather than using company email accounts to exchange written communications with each
14 other.

15 88. On information and belief, there were additional transfers of the assets, including
16 money and gifts, of the Monitorship Estate made to Defendants at the direction of Tucker, which
17 constituted fraudulent transfers and which rightfully belong to the Monitorship Estate. The details
18 of these transactions shall be learned through discovery in this case. On information and belief,
19 these payments were exorbitantly high and/or did not constitute reasonably equivalent value in
20 exchange for the services rendered by Defendants. Furthermore, Defendants knew or should have
21 known at the time of the transfers the fraudulent purpose and nature of the transfers, and
22 Defendants certainly would have discovered the fraudulent nature and purpose of the transfers if
23 they had conducted even the most minimal or cursory inquiry into the matter.

24 **Other**

25 89. Tucker's payday lending business was fraudulent during the entire time when
26 Defendants received transfers. All payments of the assets of the Monitorship Estate to Defendants
27 were fraudulent payments based upon unauthorized and fraudulent payday loan activities.

28 ///

1 Monitor the entire amount of the payments and gifts made to Defendants that rightfully belong to
2 the Monitorship Estate.

3 106. The Monitor is entitled to recover prejudgment interest from Defendants from the
4 date of the receipt of each gift or payment.

5 **COUNT III**

6 **REQUEST FOR ACCOUNTING BY DEFENDANTS**

7 **(Against All Defendants)**

8 107. The Monitor repeats and realleges the allegations of each and every one of the prior
9 paragraphs, inclusive, as if fully set forth herein.

10 108. To ascertain the exact amounts of the assets of the Monitorship Estate received by
11 Defendants at the direction of Tucker, including, but not limited to, all assets of BA Services, and
12 to recover the amounts subsequently transferred by Defendants to others, the Monitor seeks entry
13 of an order compelling Defendants to file with the Court and serve upon the Monitor an accounting,
14 under oath, detailing the amounts received from Tucker, all accounts holding Monitorship Estate
15 assets, including, but not limited to, BA Services, and all tribal entities, including, but not limited
16 to, AMG Services; the current locations of the amounts, including the specific bank accounts
17 where the distributions are held; the persons or entities with control over the accounts; and the
18 location of any assets purchased or acquired with those moneys.

19 **JURY DEMAND**

20 The Monitor demands a trial by jury.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Monitor respectfully prays for judgment against Defendants as
23 follows:

- 24 1. For the return of funds, or anything of value acquired with those funds, which were
25 acquired by Defendants through fraudulent transfers and/or unjust enrichment of
26 the Monitorship Estate's assets, including funds acquired as purported obligations
27 supposedly owed to the Defendants by the Monitor Entities, tribal entities, and
28 other Tucker-controlled entities;

2. For imposition of a constructive trust in favor of Plaintiff as to all funds and gifts received by Defendants at the direction of Tucker from the Monitor Entities, tribal entities, and other Tucker-controlled entities;
3. For a judgment ordering Defendants to file an accounting, under oath, as requested herein;
4. For pre- and post- judgment interest;
5. For attorneys' fees, and costs, to the extent permitted by law; and
6. For such other and further relief as the Court may deem proper.

Dated: November 29, 2017

MCNAMARA SMITH LLP

By: /s/ Edward Chang
Edward Chang
Attorneys for Thomas W. McNamara,
Court-Appointed Monitor